

Securities and Exchange Commission

§ 240.19d-2

including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter.

(h) *Contents of notice required by paragraph (g).* Any notice filed pursuant to paragraph (g) of this section shall consist of the following, as appropriate:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the record of the organization;

(2) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the organization in support of the resolution of the principal issues raised in the proceeding;

(3) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(4) Any description furnished by or on behalf of the person concerned of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person;

(5) A copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(6) The nature of the action taken and the date upon which such action is to be made effective; and

(7) Such other matters as the organization deems relevant.

(i) *Notice of summary suspension of membership, participation, or association, or summary limitation or prohibition of access to services.* If any self-regulatory organization for which the Commission is the appropriate regulatory agency summarily suspends a member, participant, or person associated with a member, or summarily limits or prohibits any person with respect to access to or services offered by the organization or (in the case of a national securities exchange or a registered securities association) a member thereof pursuant to the provisions of section 6(d)(3), 15A(h)(3) or 17A(b)(5) (C) of the Act, such organization shall, within 24 hours of the effectiveness of such summary suspension, limitation or prohibi-

tion notify the Commission of such action, which notice shall contain at least the following information:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The date upon which such summary action has or will become effective;

(3) If such summary action is based upon the provisions of section 6(d)(3)(A), 15A(h)(3)(A), or 17A(b)(5) (C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization;

(4) If such summary action is based upon the provisions of section 6(d)(3) (B) or (C), 15A(h)(3) (B) or (C), or 17A(b)(5)(C) (ii) or (iii) of the Act, a statement describing, as appropriate:

(i) The financial or operating difficulty of the member or participant upon which such organization determined the member or participant could not be permitted to continue to do business with safety to investors, creditors, other members or participants, or the organization;

(ii) The pertinent failure to meet qualification requirements or other prerequisites for access and the basis upon which such organization determined that the person concerned could not be permitted to have access with safety to investors, creditors, other members, or the organization; or

(iii) The default of any delivery of funds or securities to a clearing agency by a participant.

(5) The nature and effective date of the suspension, limitation or prohibition; and

(6) Such other matters as the organization deems relevant.

(15 U.S.C. 78f, 78k-1, 78o, 78o-3, 78q, 78q-1, 78s and 78w)

[42 FR 36415, July 14, 1977, as amended at 49 FR 23831, June 8, 1984]

§ 240.19d-2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15

U.S.C. 78s(d)(1), pursuant to Section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act (15 U.S.C. 78f(b)(6), 78o-3(b)(7) or 78q-1(b)(3)(G)), or summarily suspends or limits or prohibits access pursuant to Section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act (15 U.S.C. 78f(d)(3), 78o-3(h)(3) or 78q-1(b)(5)(C)), any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Commission a written motion for a stay of imposition of such action pursuant to Rule 401 of the Commission's Rules of Practice, §201.401 of this chapter.

[60 FR 32825, June 23, 1995]

§ 240.19d-3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, participation, bar from association, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 420 of the Commission's Rules of Practice, §201.420 of this chapter.

[60 FR 32825, June 23, 1995]

§ 240.19g2-1 Enforcement of compliance by national securities exchanges and registered securities associations with the Act and rules and regulations thereunder.

(a) In enforcing compliance, within the meaning of section 19(g) of the Act, with the Act and the rules and regulations thereunder by its members and persons associated with its members, a national securities exchange or registered securities association is not required:

(1) To enforce compliance with sections 12 (other than sections 12(j) and 12(k)), 13, 14 (other than section 14(b)), 15(d) and 16 and the rules thereunder except to the extent of any action normally taken with respect to any person which is not a member or a person associated with a member;

(2) To enforce compliance with respect to persons associated with a

member, other than securities persons or persons who control a member; and

(3) To conduct examinations as to qualifications of, require filing of periodic reports by, or conduct regular inspections (including examinations of books and records) of, persons associated with a member, other than securities persons whose functions are not solely clerical or ministerial.

(b) For the purpose of this rule:

(1) A *securities person* is a person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *Provided, however*, That a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association; and

(2) *Control* means the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract or otherwise; *Provided, however*, That:

(i) Any person who, directly or indirectly, (A) has the right to vote 25 percent or more of the voting securities, (B) is entitled to receive 25 percent or more of the net profits, or (C) is a director (or person occupying a similar status or performing similar functions) of a company shall be presumed to be a person who controls such company;

(ii) Any person not covered by paragraph (b)(2)(i) of this section shall be presumed not to be a person who controls such company; and

(iii) Any presumption may be rebutted on an appropriate showing.

(Secs. 3, 6, 19, 23, 48 Stat. 882, 885, 898, as amended (15 U.S.C. 78c, 78f, 78s, 78w); sec. 15A, 52 Stat. 1070, as amended (15 U.S.C. 78o-3))

[41 FR 51808, Nov. 24, 1976]